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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,992	11/16/2001	Atchara Chaiyawat	60SI01996	2195

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02/12/2003

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EXAMINER

HOWARD, SHARON LEE

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/995,992

Applicant(s)

CHAIYAWAT ET AL.

Examiner

Sharon L. Howard

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/13/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Examiner acknowledges receipt of IDS filed on 12/13/01.

Claims 1-19 are pending.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claim 9(d) is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9(d), at line 19, the words "red, yellow, black" are enclosed within a parentheses. It is suggested that applicant remove the parentheses and recite "red, yellow and black iron oxides."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3,5,7 are rejected under 35 U.S.C. 102(b) as being anticipated by the WO 99/22696 document.

The document discloses a makeup composition comprising a silicone gel, wherein the gel comprises an organopolysiloxane elastomer dispersed in a silicone-compatible vehicle and a silicone oil base. The document discloses that the gel is

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formed from hydrosilation products (page 4, lines 3-34), of an organopolysiloxane having vinyl or allyl groups bonded to at least one terminal silicon atom, and organohydrogenpolysiloxane (page 5, lines 1-5). The silicone oil base may contain oils other than silicone oil, esters, petrolatum and fatty alcohols (page 7, lines 8-34), a colored material (e.g. iron oxides, titanium dioxide and ultramarines, D&C or FD&C pigments, lakes and blends thereof (page 9, lines 8-25). The WO' document also discloses using film forming agents which can confer transfer-resistance to the makeup product (page 9, lines 29-32). The document discloses that the gel composition is also known to be formulated in lipsticks, powders, blushes, mascara, foundations, eyeliners, eyeshadows (page 6, lines 14-21).

The document meets the limitations of the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/22696 document in combination with Kilgour et al. (USP 5,760,116).

The WO' document is discussed above.

Although the WO' document generically discloses that the gel is formed from hydrosilation products, the document does not teach a particular gel formation.

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However, Kilgour teaches cosmetic compositions comprising a silicone gel consisting of a gel which is formed by the hydrosilylation product of a linear alkenyl stopped polyorganosiloxane and a resin (col.5, lines 35-67, bridging col.6, lines 1-51). Kilgour also discloses a process for dispersing a silicone gel comprising a hydrosilylating a linear alkenyl stopped polyorganosiloxane (col.4, lines 36-67) with a resin, in the presence of a first silicone thereby forming a gel and mixing said gel with a second silicone (col.5, lines 7-31). Kilgour teaches that the compositions are known to be useful in color cosmetics such as lipsticks, blushes, foundations, makeup and mascara (col.8, lines 48-58).

Both references teach cosmetic compositions containing a silicone gel. It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. The idea of combining them flows logically from their having been individually taught in the prior art. **See In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).** Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of the WO' document and Kilgour. One having ordinary skill in the art would have been motivated to prepare a third composition by including the particular gel into the composition of the WO' document, because the third composition can be used for the same purpose forming a gel from a silicone.

The expected result would be a cosmetic composition comprising a silicone gel, a colored material or pigments and a dispersing vehicle.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Howard whose telephone number is (703) 308-4359. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-3121 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.



Sharon Howard
February 8, 2003



CARLOS A. AZPURU
PRIMARY EXAMINER
GROUP 1500